Handling requests in a reasonable manner to work flexibly: an Acas guide

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In this guidance the word **"should"** is used to indicate what Acas considers to be good employment practice, rather than legal requirements. The word **"must"** is used to indicate where something is a legal requirement.

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Introduction

This good practice guidance is designed to help employers and employees with handling the statutory right to request flexible working. It is a companion guide to Acas' statutory code of practice. In recent years there has been a growing demand for flexible working, both from individuals who want to achieve a better balance between their work and home life and from organisations which want to align their business needs with the way their employees work and customer needs.

Many employers are recognising there are benefits to properly managed flexible working arrangements in a business. For more guidance on introducing flexible working and better management of a flexible workforce, see the Acas website at www.acas.org.uk.

What is the right to request flexible working?

Under provisions set out in the Employment Rights Act 1996 and regulations made under it, all employees have a statutory right to ask their employer for a change to their contractual terms and conditions of employment to work flexibly provided they have worked for their employer for 26 weeks continuously at the date the application is made. An employee can only make one statutory request in any 12 month period. Employees who have been employed for less than 26 weeks, agency workers and office holders do not have a statutory right to request flexible working. Nevertheless, employers may still wish to consider a request from these groups as flexible working can bring business benefits as well as benefits to the employee.

Before June 2014 the right only applied to the parents of children under 17 or 18 in the case of parents of disabled children or to those caring for an adult. Now any eligible employee can apply to work flexibly for any reason.

Getting ready – addressing attitudes

Employers can better manage flexible working requests by creating the right environment where employees can be sure decisions regarding their requests will be handled objectively and fairly and that employees will not be treated badly because they asked for flexible working arrangements.

Example:

Michael is the owner of a business employing around 200 people. He wants to increase flexible working across the business as he believes it will enhanced motivation, loyalty and lower staff turnover. He raises the issue at the Board and notices some Directors view flexible working as a problem and indicative of a low commitment to the business. He finds this view held by other managers.

Michael persuades the Board of his commitment and the business benefits of flexible working. His leadership changes attitudes with line managers and employees report feeling more valued and treated fairly as a result.

Developing a right to request policy

Employers should consider introducing a policy for handling requests to work flexibly. A policy can help to ensure consistency in handling requests and can also make it easier to communicate information on the right to request in a transparent manner to all employees. It can also help explain to employees that the new right to request in not only available to parents and carers as the former right to request did, although employers should not discriminate in considering requests to work flexibly, see page 13.

Any policy should be developed in consultation with employees and their representatives, including trade unions where they are recognised. This can help ensure buy-in to the policy and also that it works to the benefit of both employees and the organisation as a whole.

Issues that such a policy should cover include:

a. How employees should make the application, including who the application should be made to and what should be covered in the application (see page 4).

b. A statement to the effect that the employer will consider the request and will only reject it for one of the eight business reasons (see page 7).

c. Who can accompany the employee at any meeting regarding the request.

d. What arrangements there are for appeals.

e. The time limits on dealing with requests.

A right to request policy can be a stand alone policy or it can be included within a wider equality or flexible working policy. Some employers may decide not to have a written policy however they should ensure their employees know how to apply and must still abide by the law.

Making an application

The right to request flexible working legislation requires that employees must make their request in writing, setting out:

- The date of the application, the change to working conditions they are seeking and when they would like the change to come into effect.
- What effect they think the requested change would have on the employer and how, in their opinion, any such effect might be dealt with.
- That this is a statutory request and if they have made a previous application for flexible working and the date of that application.

To ensure an employee makes an application correctly, the employer should provide guidance on what information the application must contain. The employee should also state if they are making their request in relation to the Equality Act 2010, for example, as a reasonable adjustment for a disability.

If the employee is only looking for an informal change for a short period to their working hours or conditions, for instance to cope with a bereavement or to pursue a short course of study, employers may wish to consider allowing them to revert back to their old conditions after a specified period, say three months, or after the occurrence of a specific event, such as the end of a course of study. Employees must be aware that if the employer approves their application under the right to request, they do not have a statutory right to request another variation in contractual terms for a period of 12 months although they may still ask without the statutory right.

Example:

An employer receives a request from Anne asking to reduce her hours. The employer is happy to approve this request immediately but decides to have a quick word with her beforehand. Anne tells her employer that her mother is convalescing after an operation and needs Anne to help with the housework. Anne expects her mother to be up and looking after herself in two to three months and would be looking to return full-time then. The employer realises that without this discussion with Anne, another employee would have been recruited to cover Anne's reduced hours and would have been unable to return her to full hours. The employer explains this to Anne and rather than change her contract, the employer makes an informal agreement to adapt her hours and cover this by recruiting a local agency worker for the period. The employer and Anne agree this in writing.

Handling the request

On receiving a request, an employer should arrange to discuss it with the employee as soon as possible. If there is likely to be a delay in discussing the request it is good practice to inform the employee. It is important that an employer deals with requests in a timely manner as the law requires the consideration process must be completed within three months of first receiving the request, including any appeal. If for some reason the request cannot be dealt within three months then an employer can extend this time limit, provided the employee agrees to the extension.

A discussion may not always be needed, such as when an employer is happy to accept a request, but it may be helpful to discuss a request with an employee anyway to ensure that the proposal put forward is the best solution for both the employer and employee.

It is helpful for any flexible working discussion to be treated like any other management conversation and should take place in a location where it cannot be overheard by other workers. The discussion does not have to be face to face and if the employer and employee agree it can be held by phone or some other way.

The discussion provides an opportunity for the employer to explore with the employee exactly what changes they are seeking and how these might be accommodated. The discussion allows the employee to explain the reasons why they are seeking the change if they choose to tell their employer this.

It is good practice for an employer to allow employees to be accompanied at a discussion by a work colleague if they wish. A work colleague can be their trade union representative or any other co-worker at the same workplace. This should be made clear to the employee before the discussion takes place and sufficiently in advance so that they can arrange the attendance of their companion. Such a policy can help an employer better consider applications from employees for whom English might not be their first language or where it may be a reasonable access requirement for a disabled employee or an employee lacking confidence.

The discussion should ideally take place at a time and location which is convenient to both the employer and the employee. If the employer or employee cannot make the initial date then another date and time should be arranged. However if an employee doesn't keep to a meeting and any subsequent rearranged one without a reason then the law allows an employer to deem the application as withdrawn. The employer should find out and consider the reasons for the employee failing to attend both meetings before reaching any decision to close their application. The employer must notify the employee of the decision.

Deciding on a request

An employer should consider the request carefully looking at the benefits of the requested changes in working conditions for the employee and the business and weighing these against any adverse business impact of implementing the changes, employers are under no statutory obligation to grant a request to work flexibly if it cannot be accommodated by the business on the grounds listed at page 7.

Having considered the changes the employee is requesting and weighed up the advantages, possible costs and potential logistical implications of granting the request the employer must let the employee know their decision, to either:

- accept the request and establish a start date and any other action; or

- confirm a compromise agreed at the discussion, such as a temporary agreement to work flexibly, see page 7; or
- reject the request, setting out clear business reasons, how these apply to the application and any appeal process you permit, see page 16.

It is good practice for the employer to communicate the decision to the employee in writing as this can prevent any confusion at a later date. Where the request is granted it is important to set out what changes will be made to the employee's terms and conditions.

There may be instances where the employer is unsure whether the arrangements requested are sustainable in the business or about the possible impact on other employees' requests for flexible working and wants to agree flexible working arrangements for a temporary or trial period rather than rejecting the request. Again, to avoid misunderstanding, it is good practice to be clear about this in writing to the employee. It is also good practice to set review points when the employer and employee can jointly discuss how the new arrangements are working and make any adjustments necessary.

Business reasons to consider in a request to work flexibly

Requests to work flexibly must be considered objectively and an employer can only refuse them if there are business reasons for doing so. The statutory code of practice requires employers to do this. These business reasons are set out in legislation and are:

- **The burden of any additional costs is unacceptable to the organisation.**

> **Tip:** In considering this, employers should reflect on whether the proposal's less obvious savings such as a reduction in overheads from homeworking and better coverage of service or increased outputs.

> Example: the burden of additional costs
>
> Jane and Liam are two managers who apply for a post together as a proposed job-share. Both have the skills and experience needed but want to balance work with outside interests. In line with the organisation's policy of considering all vacancies suitable for flexible working, the employer seriously considers their request. Both Jane and Liam want to work three days a week and whilst the employer is happy to appoint he is unable to afford the increased payroll costs. The employer discusses alternative working patterns around 2.5 days each with Jane and Liam, but they are not prepared to change their pattern. In the light of this and an inability to compromise, the employer turns down the request for flexible working.

- **An inability to reorganise work among existing staff.**

> **Tip:** An employer should consider the cost of recruiting additional staff against the potential cost of losing the existing member of staff making the request. Also consider talking to the team about any reorganisation of work where this would be appropriate before coming to a decision.

> Example: inability to reorganise work
>
> Jack is an employee at a charity giving debt advice to the public. He has a full caseload of clients. Jack wants to reduce his hours to pursue his hobby and puts a request to his boss. Jack's employer considers the workload of other staff as well as likely future demand. The employer weighs up whether work can be redistributed, but as Jack has particular language skills that colleagues do not have sharing his work would be very difficult. The employer considers that agreeing to the request would place unreasonable pressures on other staff and therefore reluctantly turns it down. The process does however make the employer consider what options the charity would have on language skills if Jack decided to leave.

- **Inability to recruit additional staff.**

> Example: inability to recruit additional staff
>
> Steve works as a bus driver and part of his shifts includes working until 2am on Fridays and Saturdays. The rest of the week the shift ends at 10pm. Steve asks to work shifts that don't include the 2am finish to improve his family life. He is happy to work till 10pm. The employer considers the request and explores whether other colleagues would be happy to do the late shift but they would not. The employer then finds he is unable to recruit new staff to cover these hours and so therefore turns down Steve's request.

- **The employer considers the change will have a detrimental impact on quality.**

> **Tip:** Employers should look carefully at the skills and potential of other employees when considering this reason. With training many staff can acquire new skills.

> Example: impact on quality
>
> A&B Autos is a small garage servicing executive cars. An experienced mechanic wants to reduce her hours and asks under the right to request flexible working. The other mechanics are still quite new and are "learning the trade" and the employer is concerned that the garage will be unable to tackle some of the more difficult repairs to the quality standards demanded by customers. The employer decides therefore to turn the request down but also offers to reconsider the request six months later after a programme of training to up-skill the other mechanics. Subsequently the success of the training programme allows the employer to approve the reconsidered request.

- **The employer considers the change would have a detrimental effect on the business' ability to meet customer demand.**

> **Tip:** When considering the impact on the business of a flexible working arrangement, an employer can trial an arrangement for a fixed period to see if it is sustainable over the longer term.

> Example: a detrimental effect on the business' ability to meet customer demand
>
> A small Estate Agency receives a request from Raj to work compressed hours. Working four longer days and freeing up Thursdays would allow him to undertake a course of part-time study. The employer is concerned that Raj will not be available to deal with pressing time-dependent issues from his customers concerning sales progress on a Thursday. He fears losing sales and attracting complaints because of Raj's absence and is inclined to refuse the request on the ground of adverse impact on customer demand. However the employer values Raj and wants to retain him. He and Raj agree to extend the three month period for considering a request under the "right to request" to trial the arrangement for 10 weeks (the length of the first of three course modules). It transpires that, rather than complain, some customers report their satisfaction at being able to deal with Raj outside normal office hours on four days of the week. The office secretary has successfully handled routine matters in his absence and in practice Raj has been willing to be contacted by phone about the few urgent issues that arose. After the successful trial the employer agrees to Raj's request for compressed hours to cover the period of the remaining two study modules.

- **Detrimental impact on performance.**

> **Tip:** Performance can mean of the individual, the team or the whole organisation.

> **Example: impact on performance**
>
> Julie has been promoted to manage a team of office-based staff where there have been problems of absenteeism, bullying and low performance. She was recruited to rebuild and motivate the team. Julie makes a request to work flexibly from home. The employer considers the request but, at least for the next 12 months, decided that Julie should be visible and sitting with the team to tackle inappropriate behaviour when it occurs and to deal with work issues immediately. The employer considers that Julie working at home would prevent the problems affecting the team being addressed effectively and speedily and so turns the request down.

- **There is insufficient work during the periods the employee proposes to work.**

> **Example: insufficient work**
>
> Colin works in a call centre dealing with US calls. He asks to change his hours to start at six am every day. The employer looks at the call pattern and decides there is inadequate demand at this time, and that agreeing the request would reduce cover at peak times and so turns the request down.

- **Planned structural changes, for example, where the employer intends to reorganise or change the business and considers the flexible working changes may not fit with these plans.**

> **Tip:** If an employer has plans in train to make change to the business then it is good practice to share these with the workforce as it could help them see opportunities through flexible working to make the business more effective.

> **Example: structural changes**
>
> Mira is a fast-order cook in a small café. She currently works 8am to 5pm and wants to start later at 10am and finish at 7pm when the café closes. Whilst this seems entirely reasonable for the business, Mira is told that the café will shortly be opening earlier at 6am and closing at 5pm to better match customer demand. The employer therefore turns down the request from Mira.

Avoiding unlawful discrimination

In considering these business reasons an employer must be careful not to inadvertently discriminate against particular employees because of their protected characteristics[1] such as where flexible working arrangements would be a reasonable adjustment for a disabled employee in the following example.

> **Example:**
>
> Gary has been recently diagnosed with Crohns disease, a symptom of which is severe fatigue especially in the mornings. He explains this to his employer who enables Gary to work flexibly with a later start time than his colleagues. This is a reasonable adjustment under the Equality Act 2010 where employers have a duty to make reasonable adjustments.

1 The Equality Act 2010 prohibits discrimination because of protected characteristics. These are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation – for more information, go to the Acas website at www.acas.org.uk.

An employer should also be careful not to directly or indirectly discriminate against employees, for instance, when dealing with requests from employees with childcare responsibilities.

Example:

Andrew asks for flexible working to care for his children. Although the employer regularly allows women employees flexible working for this reason, he refuses Andrew's request because he is a man and believes childcare is less important to him. This is likely to be direct sex discrimination.

Linda has childcare responsibilities and asks to work part-time. Her employer responds by saying that her job (a solicitor) is incapable of being done effectively by a part timer. Unless the employer can objectively justify this assertion it is likely that Linda is being indirectly discriminated against because of her sex as more women than men are likely to combine paid employment with caring responsibilities.

For more advice on avoiding discrimination, see Acas guidance at www.acas.org.uk

An employer must ensure that part-time workers are treated consistently with other workers. The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 make it unlawful to treat part-time workers worse in their contractual terms and conditions than comparable full-time workers, unless different treatment can be justified on objective grounds.

Example:

James works in a travel agency and changes his hours using the right to request flexible working. James is happy with the change and according to his employer is doing well when he applies to attend a training course for advanced travel consultants. This is a residential course that results in an NVQ qualification. However James is told that as he is part-time he cannot attend and will receive "on the job" coaching from a qualified colleague instead which will not result in a vocational qualification. Unless the employer can justify this policy it likely to be unlawful under the part -time worker regulations.

Handling requests to work flexibly in a fair way

There may be some occasions, when an employer receives more than one request to work flexibly closely together from different employees. Where this happens it may be possible to grant all of the requests received. However, before doing so the employer will need to look closely at the impact this would have on the business before coming to a decision.

Requests should be considered in the order they are received. Having considered and approved the first request the employer should remember that the business context has now changed and can be taken into account when considering the second request against the business reasons set out at page 7.

When an employer receives more than one request, they are not required by the law to make value judgements about the most deserving request. An employer should consider each case on its merits looking at the business case and the possible impact of refusing a request. An employer may want to have a discussion with the employees to see if there is any room for adjustment or compromise before coming to a decision.

Example:

Neddim and Carl both apply to work compressed hours so that they can undertake further studies. The employer is certain the business (a call centre) couldn't approve both requests because it would adversely affect the firm's ability to deliver the service. Before deciding, the employer has separate discussions with both, explaining the situation. The employer discovers that Carl was considering a distance learning package not requiring a fixed day away from the business compared to Neddim who wants to attend College half a day a week. By carefully comparing rotas the employer can accommodate both requests.

Sometimes it might not be possible, and in these instances an employer could get the agreement of the employees concerned to consider some form of random selection to decide if unable to distinguish between all the requests. It would be good practice to make this approach to how decisions will be reached in these cases known to all employees from the outset in a flexible working policy.

If an employer is unable to approve a request in an environment where a number of other employees are already working flexibly because any further flexible working arrangements will impact adversely upon the business (see page 7) it would be good practice to consider calling for volunteers from existing flexible working employees to change their contracts back to other arrangements thereby creating capacity for granting new requests to work flexibly.

Example:

Barbara manages a supermarket and is finding it increasingly difficult to approve further requests for flexible working because of the complexity of the rotas and also because she finds employees working standard arrangements are unhappy at being increasingly required to undertake unsociable shifts. Barbara is worried that these staff may leave for other employment.

Realising that some staff might welcome a change to standard hours and more money as their domestic situations have changed, she calls for volunteers. Three staff ask for these contractual changes, Barbara agrees and this gives her headroom to better manage further requests to work flexibly.

Appeals

An employee should be allowed to discuss a refusal to grant their request if there is new information that was not available to the employer at the time they made their original decision or if the employee thinks the application was not handled reasonably in line with the employer's policy. Considering an appeal can also help avoid the employee raising the issue as a workplace grievance. If asked by an employee, it would be good practice for an employer to allow employees to be accompanied by a work colleague to any appeal meeting.

It is helpful for any flexible working discussion to be treated like any other management conversation and should take place in a location where it cannot be overheard by other workers. An appeal does not have to be dealt with face to face and if the employer and employee agree it can be held by phone or other method.

Any appeals should be dealt with as quickly as possible. Remember, although the law does not require an employer to allow an appeal, where they do the employer must consider the whole request including any appeal within three months of first receiving the original request for flexible working unless an extension is agreed with the employee.

Handling disputes

Wherever possible it is better to reach agreement on flexible working within the workplace, effective workplace communication including mediation when appropriate can help secure agreement. Sometimes this might not be possible and the employee may wish to take their issues to an employment tribunal, however an alternative if both parties agree, is to use the Acas Arbitration Scheme to resolve the dispute.

This scheme is designed to be a speedy, informal, confidential and non-legalistic alternative to an employment tribunal. An arbitrator hears the case and makes a decision which is binding on both parties. There is no right to go to an employment tribunal if the parties have opted to use this scheme instead. The remedies and compensation which an arbitrator can award are the same as those at an employment tribunal. The agreed reference to arbitration must be made within three months of the notification date of the employer's appeal decision or, in complaints about procedural breaches, three months from the date of the alleged breach.

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Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply. It may, therefore, be wise to seek legal advice.

Acas aims to improve organisations and working life through better employment relations. We provide up-to-date information, independent advice, high quality training and we work with employers and employees to solve problems and improve performance.

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